



AGENDA ITEM NO.

## STAFF REPORT

MAPC: October 26, 2023

DAB IV: November 6, 2023

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<u>CASE NUMBER:</u>	CON2023-00030 (City)
<u>APPLICANT/AGENT:</u>	United Distributors, Inc. (Applicant)/James Cardinal (Agent)
<u>REQUEST:</u>	Conditional Use for a Wireless Communications Facility
<u>CURRENT ZONING:</u>	LC Limited Commercial District
<u>SITE SIZE:</u>	0.35 acres (parent parcel)/ 800 sq. ft. (lease area)
<u>LOCATION:</u>	Generally located north of West Mentor Avenue and east of South Seneca Street (420 South Seneca Street).
<u>PROPOSED USE:</u>	92-foot-tall telecommunications tower
<u>RECOMMENDATION:</u>	Deny.



**BACKGROUND:** The applicant is requesting a Conditional Use to allow the placement of a 92-foot-tall monopole structure tower on property generally located north of West Mentor Avenue and east of South Seneca Street (420 South Seneca Street). The site is zoned LC Limited Commercial District and is developed with an amusement machine supplier. The parent parcel is 0.35 acres in size. The tower will be placed within the 20-foot by 40-foot (800 square foot) lease area located in the southeast portion of the subject site.

Section III-A.2.d of the Wichita-Sedgwick County Wireless Communication Master Plan limits the height of towers in the LC Limited Commercial District that can be approved by Administrative Permit to 120 feet as long as it complies with the compatibility height standards of the Unified Zoning Code (UZY). While the proposed monopole tower is under 120 feet, it does not meet the compatibility height standards set forth in Section IV-C.5.b of the UZY. The compatibility height standards for Wireless Communication Facilities are as follows:

Wireless Communication Facilities shall not exceed a height equal to the distance to the Lot line of the property zoned TF-3 or more restrictive. For example, a Wireless Communication Facility located 100 feet from the Lot Line of property zoned TF-3 or more restrictive cannot exceed a height of 100 feet.

The lease area is 19 feet from a property zoned SF-5 Single-Family Residential District, and the proposed monopole tower is 92 feet in height. Therefore, it does not meet the height compatibility standards. Should the Conditional Use request be approved, the compatibility height standards must be waived by the Wichita City Council.

Additionally, the subject site is located within the D-O Delano Overlay District. Wireless Communications Facilities are subject to Section III-C.8.c(1)(b) of the Unified Zoning Code and shall be allowed only as a Conditional Use in the D-O District, regardless if said Uses are stated as permitted Uses in the Underlying Districts.

The proposed tower would be accessed via the existing driveway off West Mentor Avenue. The applicant indicates this tower will be a monopole structure. Section III-B of the Wireless Communication Master Plan encourages the design of a tower to minimize the visual impact. Lattice towers are discouraged, whereas monopole towers are encouraged. The proposed tower will be enclosed with a six-foot chain-link fence surrounding the compound. No landscaping is shown on the site plans.

Based on the zoning of the residence to the east, solid screening and landscaping are required. The Wichita Landscape Ordinance requires 8 square feet per lineal foot for properties with less than 175 square feet of street frontage. Thus, the applicant will require 480 square feet of landscaped street yard.

KSA 66-2019(f) specifies 18 prohibitions when considering an application for a communication structure. A list of all 18 prohibitions is listed as an attachment.

The character of the surrounding area is commercial and industrial on the arterial streets and residential on the local streets. The subject site is located within a parcel that is developed with an amusement machine supplier. Property to the north of the parent parcel is zoned GC General Commercial District and is undeveloped. Property to the south is zoned SF-5 Single-Family Residential District and is developed with a single-family dwelling. Properties to the east are zoned SF-5 Single-Family Residential District and TF-3 Two-Family Residential District and are either undeveloped or developed with single-family dwellings. Property to the west is owned by the applicant and is an extension of the amusement machine supplier facility.

**CASE HISTORY:** On July 19, 1887, the subject site was platted as Reserve E of Campbell's Subdivision, Lawrence's Addition. There are no zoning cases associated with this site.

**ADJACENT ZONING AND LAND USE:**

NORTH:	GC	Undeveloped/vacant
SOUTH:	SF-5	Single-family dwelling
EAST:	SF-5	Single-family dwellings
WEST:	LC	Amusement machine supplier facility

**PUBLIC SERVICES:** The proposed Wireless Communication Facility will not require any municipal services. The lease area will have access to West Mentor Avenue, which is a paved, two-way local street with sidewalks on both sides. Wichita Transit serves this site within one-block northwest of the subject site, on the southwest corner of West Maple Street and South Seneca Street.

**CONFORMANCE TO PLANS/POLICIES:**

The combined conclusion for conformance to the Plans and Policies is this request complies with the overall spirit and intent to accommodate both the expansion of wireless communication capabilities within the City, while honoring the introduction of this type of use at this location by requiring the Conditional Use approval process and applying all the Supplementary Use Regulations to the property to mitigate the impacts associated with the new development.

The requested Conditional Use is in conformance with *The Community Investments Plan*. The *Community Investments Plan* (the Wichita-Sedgwick County Comprehensive Plan) includes the 2035 Future Growth Concept Map. The Map identifies the area to be located in a “Commercial” area, which the *Plan* defines as “areas that reflect the full diversity of commercial development intensities and types typically found in a large urban municipality.”

The requested Conditional Use not in conformance with the Location/Design Guidelines of the Wireless Communication Master Plan (adopted January 2019). The Guidelines state that “*In general, tall wireless communication facilities should be limited to heavy commercial and industrial areas and should decrease in height as the intensity of development decreases, with the shortest facilities being located in residential areas.*” While the subject site is adjacent to an commercial use, it is also on a local residential street with adjacent single-family zoning and dwellings.

The requested Conditional Use is in conformance with the *Delano Neighborhood Plan*. The Future Land Use Concept Map identifies the subject site as appropriate for “Commercial” uses.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be **DENIED**.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is commercial and industrial on the arterial streets and residential on the local streets. The subject site is located within a parcel that is developed with an amusement machine supplier. Property to the north of the parent parcel is zoned GC General Commercial District and is undeveloped. Property to the south is zoned SF-5 Single-Family Residential District and is developed with a single-family dwelling. Properties to the east are zoned SF-5 Single-Family Residential District and TF-3 Two-Family Residential District and are either undeveloped or developed with single-family dwellings. Property to the west is owned by the applicant and is an extension of the amusement machine supplier facility.

2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned LC Limited Commercial District and is suitable to residential, civic, and commercial development including Wireless Communication Facilities permitted by Conditional Use Approval. The site is currently used as an amusement machine supplier facility.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed site is not large enough to accommodate a 92-foot tower because it is not in compliance with the height compatibility standards of the UZC. These height standards ensure safety of surrounding properties should the tower fall. The tower may have negative visual impacts on surrounding properties.
4. Length of time the property has been vacant as currently zoned: The subject site is not vacant. It currently pertains to the amusement machine supplier property to the west.
5. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approval of the request would mean economic gain for the applicant, which is generally considered a gain to the public welfare. Approval would also promote the public interest in growing and maintaining reliable wireless services. Approval could have negative impacts on public health and safety due to the proximity of the tower to the nearby residential structure because the tower does not meet the compatibility height standards, which are designed to promote safety of nearby properties should the tower fall. Denial would presumably represent a loss of economic opportunity to the applicant and/or land owner.
6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The requested Conditional Use is in conformance with the *Community Investments Plan* and the *Delano Neighborhood Plan*, but it is not in conformance with the *Wireless Communication Master Plan*, as discussed in the report.
7. Impact on the proposed development on community facilities: Construction of a Wireless Communications Facility is not anticipated to have detrimental impacts on community facilities.
8. Opposition or support of neighborhood residents: At the time of the publication of the staff report, staff received one phone call in opposition to the requested Conditional Use.

Should the MAPC find that the Conditional Use be approved, it is recommended that the MAPC adopt alternate findings supporting their recommendation. Staff recommends the following conditions. The MAPC would need to include a waiver of height compatibility standards.

### **Recommended Conditions of Approval**

1. All requirements of Section III-D.6.g of the Unified Zoning Code shall be met.
2. The applicant shall obtain all permits necessary to construct the Wireless Communication Facility within 50 days of submittal of the building permit application, and the Wireless Communication Facility shall be erected within one year of final approval of the Conditional Use.
3. The support structure shall be a monopole design that is silver or gray or a similar unobtrusive color with a matte finish to minimize glare.
4. The support structure shall be no taller than 92 feet in height with a ten-foot lightning rod.
5. The site shall be developed in general conformance with the approved site plans. All improvements shall be completed before the facility becomes operational.

6. The applicant shall obtain from the FAA and provide to MAPD a Determination of No Hazard for any obstruction proposed under this application. This FAA determination shall be based upon coordinates and elevations taken by a licensed and qualified land surveyor and conform to FAA's most precise, current accuracy tolerance standards. The applicant shall demonstrate to the MAPD, with concurrence of the Wichita Airport Authority, that any obstructions proposed under this application would not adversely affect or alter any precision or non-precision instrument approaches.
7. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
8. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

Attachments:

1. KSA 66-2019(f) List of Prohibitions
  2. Site Plans submitted by Applicant
  3. Tower Elevation submitted by Applicant
  4. Aerial Map
  5. Zoning Map
  6. Land Use Map
  7. Delano Future Land Use Map
  8. Site Photos
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**KSA 66-2019(f). Siting of wireless infrastructure; public lands and public right-of-way; wireless providers and governing bodies, rights and requirements for application process.**

(a) The Kansas legislature finds and declares that:

To ensure uniformity across the state with respect to consideration of every application, an authority shall not:

(1) Require an applicant to submit information about, or evaluate an applicant's business decisions with respect to, the applicant's designed service, customer demand for service or quality of the applicant's service to or from a particular area or site. An authority may require an applicant filing an application for a new wireless support structure to state in such application that the applicant conducted an analysis of available collocation opportunities on existing wireless support structures within the same search ring defined by the applicant, solely for the purpose of confirming that an applicant undertook such analysis;

(2) require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. An authority may not require proprietary, confidential or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunications traffic studies;

(3) evaluate an application based on the availability of other potential locations for the placement of wireless support structures or wireless facilities including, but not limited to, the option to collocate, instead of construct, a new wireless support structure or for substantial modifications of a support structure;

(4) dictate the type of transmission equipment or technology to be used by the applicant including, but not limited to, requiring an applicant to construct a distributed antenna system or small cell facility in lieu of constructing a new wireless support structure or discriminate between different types of infrastructure or technology;

(5) require the removal of existing wireless support structures or wireless facilities, wherever located, as a condition for approval of an application. This paragraph shall not preclude an authority from adopting reasonable rules with respect to the removal of abandoned wireless support structures or wireless facilities;

(6) impose any restrictions at or near civilian airports with respect to objects in navigable airspace height limitations, proximity to civilian airports or markings and lighting on wireless support structures or base stations that are greater than, or in conflict with, any restrictions imposed by the federal aviation administration, except that this paragraph shall not be construed so as to impact any existing height restrictions adopted by an authority as of the effective date of this section on wireless support structures or base stations located at or near civilian airports;

(7) establish or enforce regulations or procedures for radio frequency signal strength or the adequacy of service quality;

(8) impose surety requirements, including bonds, escrow deposits, letters of credit or any other type of financial surety to ensure that abandoned or unused facilities can be removed, unless the authority imposes similar requirements on other permits for other types of commercial development or land uses, and any such instrument cannot exceed a reasonable estimate of the direct cost of the removal of the facility. If surety requirements are imposed, any such requirements shall be competitively neutral, non-discriminatory, reasonable in amount and commensurate with the historical record for local facilities and structures that are abandoned;

(9) discriminate or create a preference on the basis of the ownership of any property, structure, base station or wireless support structure when promulgating rules or procedures for siting wireless facilities or for evaluating applications or require the placement of wireless support structures or wireless facilities on

property owned or leased by the authority, but an authority may develop a process to encourage the placement of wireless support structures or wireless facilities on property owned or leased by the authority, including an expedited approval process. Nothing in this subsection shall be construed to hinder or restrict the siting of public safety communications towers, including, but not limited to, police and fire;

(10) impose any unreasonable requirements or obligations regarding the presentation, appearance or function of the wireless facilities and equipment including, but not limited to, those relating to any kinds of materials used and those relating to arranging, screening or landscaping of facilities. In developing such a requirement or obligation for wireless facilities located on a public right-of-way, the authority shall consider input from property owners adjoining the affected public right-of-way;

(11) impose any requirements that an applicant purchase, subscribe to, use or employ facilities, networks or services owned, provided or operated by an authority, in whole or in part, or by any entity in which the authority has a competitive, economic, financial, governance or other interest;

(12) impose environmental testing, sampling or monitoring requirements that exceed federal law;

(13) impose any compliance measures for radio frequency emissions or exposure from wireless facilities that exceed the requirements of the federal communications commission rules for radio frequency;

(14) in conformance with 47 U.S.C. § 332(c)(7)(B)(iv), reject an application, in whole or in part, based on perceived or alleged environmental effects of radio frequency emissions or exposure;

(15) prohibit the use of emergency power systems that comply with federal and state environmental requirements and do not violate local health and safety requirements and local noise control ordinances, but no local regulations shall prevent the provision of emergency power during an actual emergency;

(16) condition or require the approval of an application based on the applicant's agreement to permit any wireless facilities provided or operated, in whole or in part, by an authority or by any other entity to be placed at, or collocated with, the applicant's wireless support structure;

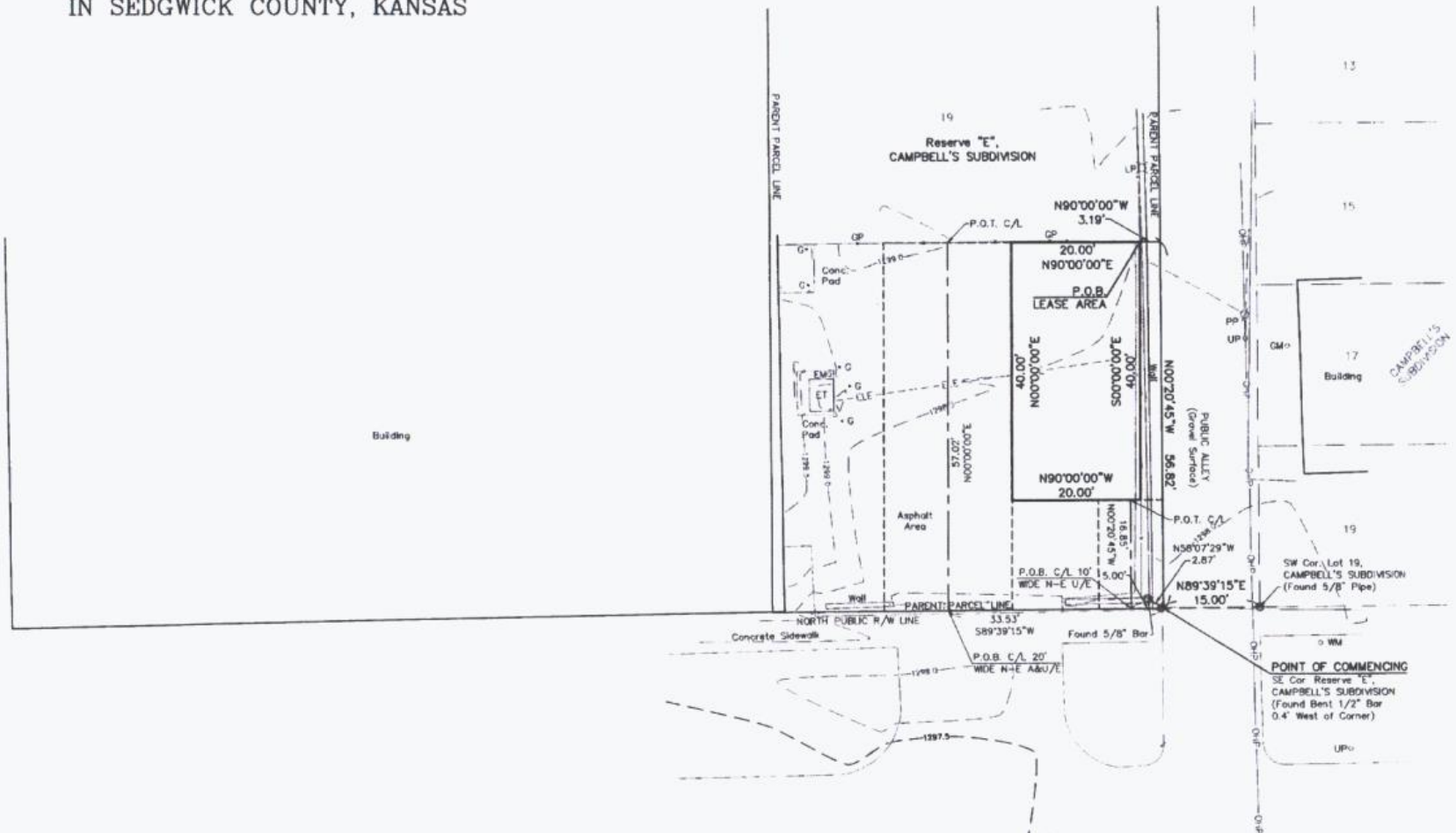
(17) impose a greater setback or fall-zone requirement for a wireless support structure than for other types of commercial structure of a similar size; or

(18) limit, for less than 10 years, the duration of the approval of an application. Any renewals shall be negotiated in good faith. Construction of the approved structure or facilities shall commence within one year of final approval and shall be diligently pursued to completion.

## Site Plans

WICC TIGHT ENDS

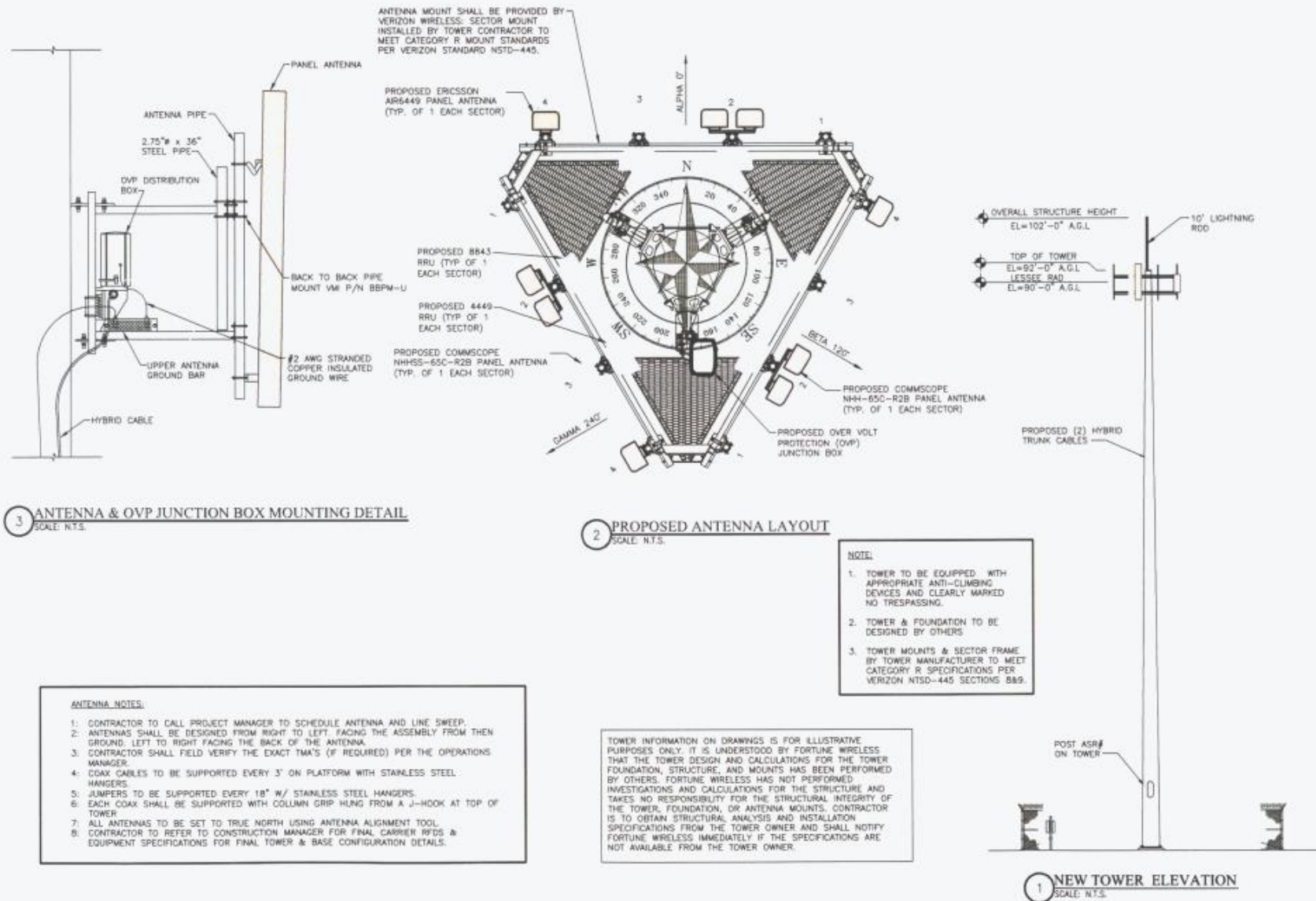
PART OF THE NW 1/4, SECTION 29, T27S, R1E,  
IN SEDGWICK COUNTY, KANSAS







## Tower Elevation Plan




















# 2035 Wichita Future Growth Concept Map

## Legend

-  Established Central Area
-  Residential and Employment Mix
-  New Employment
-  New Residential
-  Wichita City Limits
-  Other Cities
-  Northwest Bypass Right-of-Way

## Statistical Development Areas

-  Other Urban Growth Areas 2014
-  Other Urban Growth Areas 2014
-  Rural Growth Areas 2014

## LAND USE

-  Residential
-  Commercial
-  Industrial
-  Major Air Transportation & Military
-  Parks and Open Space
-  Agricultural or Vacant
-  Major Institutional
-  Nghbd\_Plan\_Areas



City of Wichita, Kansas  
Metropolitan Area Planning Commission  
2023-2035 Future Growth Concept Map  
This map is a conceptual representation of future growth and land use patterns. It is not a legal document and should not be used for legal purposes. The map is subject to change without notice. The City of Wichita, Kansas, and the Metropolitan Area Planning Commission are not responsible for any errors or omissions on this map. The map is intended for informational purposes only.

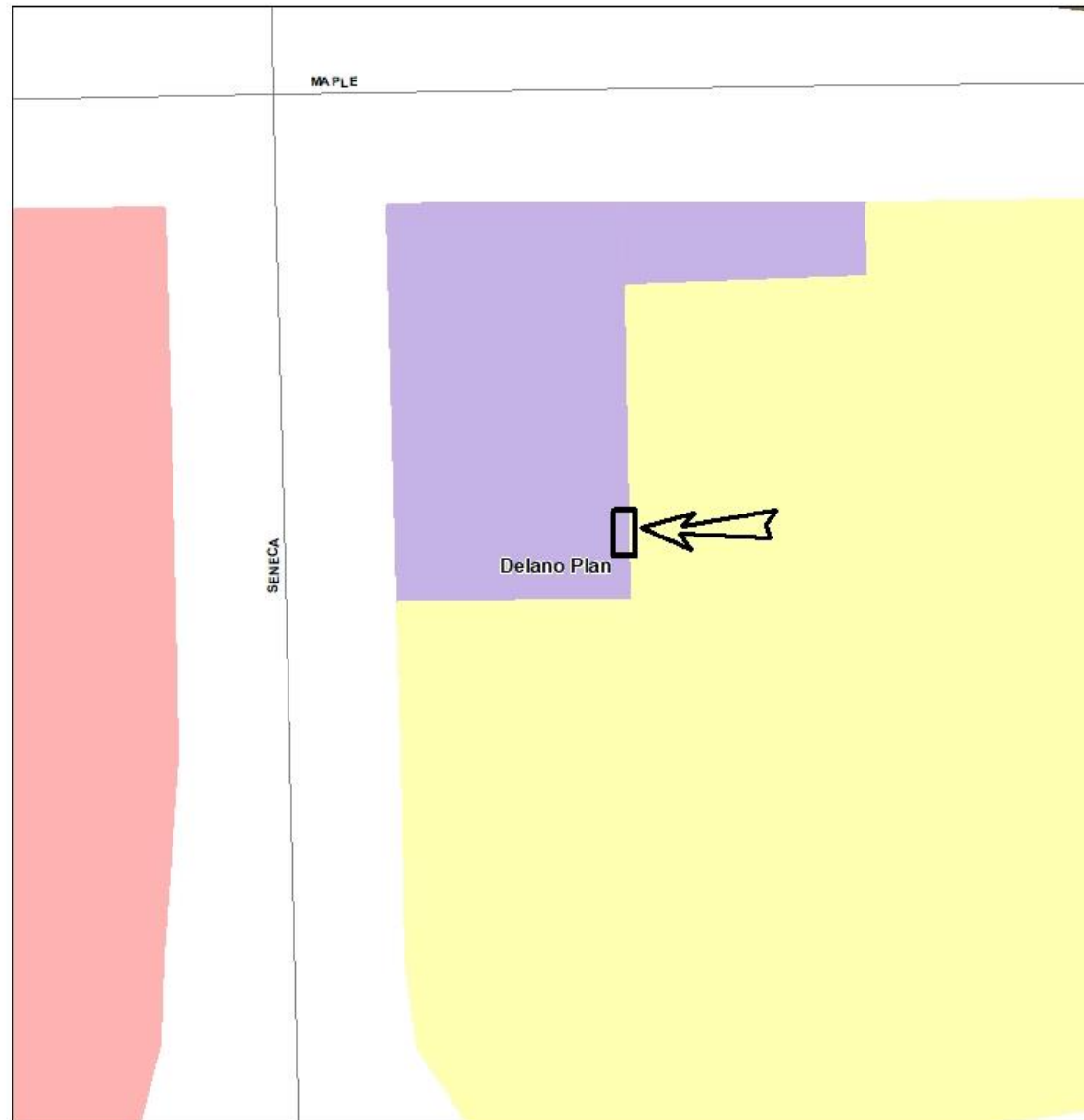
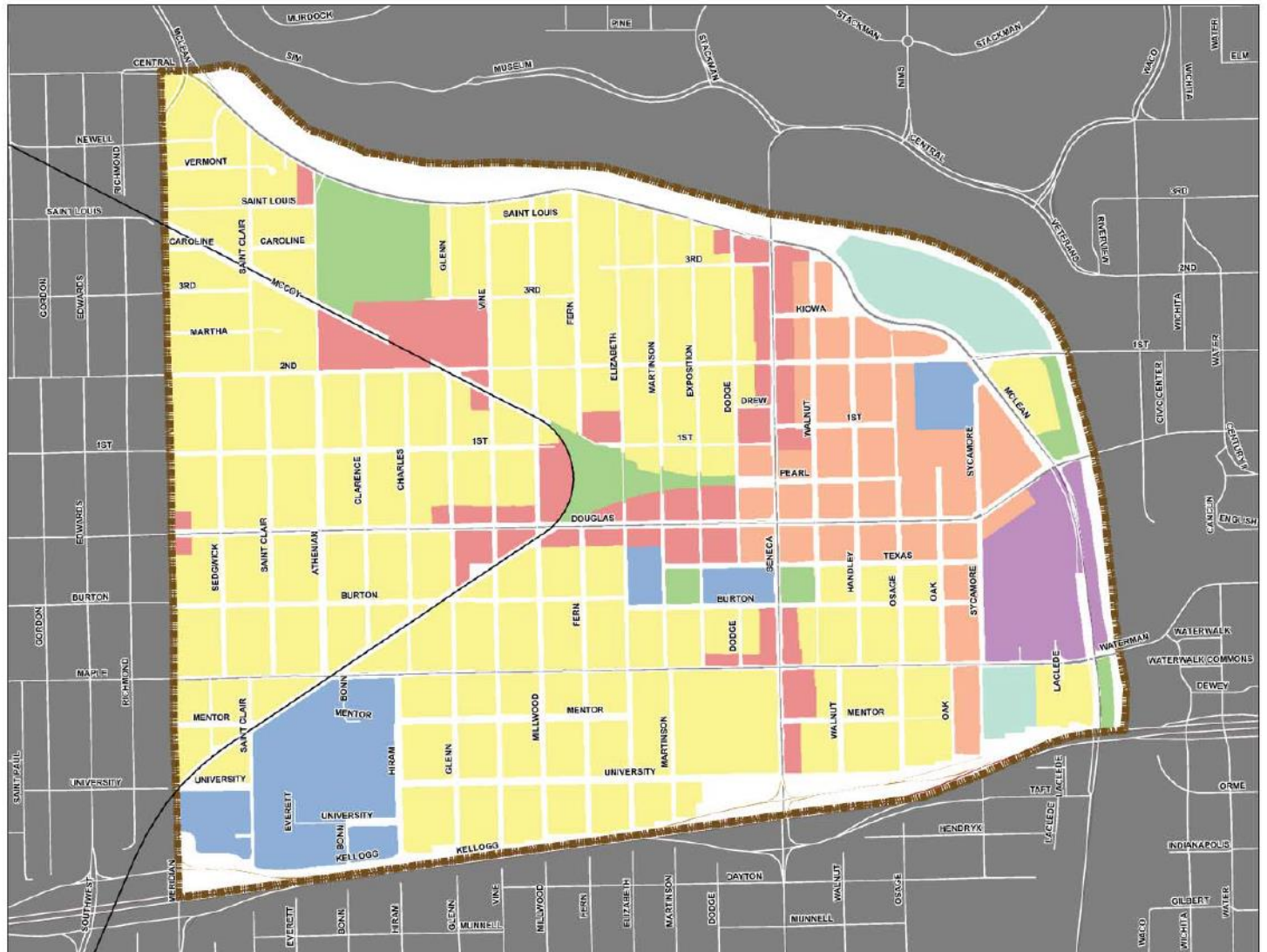


Fig. 17 Future Land Use Concept

**Legend**

-  Delano Neighborhood Boundary
- Future Land Use**
  -  Residential
  -  Commercial
  -  Mixed Use
  -  Major Institutional
  -  Recreation Entertainment
  -  Parks and Open Space
  -  Ballpark Village





**Looking north at site**



**Looking south away from site**



**Looking west away from site**



**Looking east away from site**

